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GOVERNMENT OF KERALA

Law (Leg. PBN) Department

NOTIFICATION

No. 402-Leg-Pbn2/77/Law. *Dated, Trivandrum, 8th January 1977.*

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II—Section 1, dated the 18th December, 1976, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 18th December, 1976.

By order of the Governor,

K. VISWANATHAN NAIR,

Additional Law Secretary.

33/68/MC.

THE CONSTITUTION (FORTY-SECOND AMENDMENT) ACT, 1976

ARRANGEMENT OF SECTIONS

SECTIONS

SECTIONS

THE CONSTITUTION (FORTY-SECOND AMENDMENT) ACT, 1976

AN

ACT

further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Constitution (Forty-second Amendment) Act, 1976.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint and different dates may be appointed for different provisions of this Act.

2. *Amendment of the Preamble.*—In the Preamble to the Constitution,—

(a) for the words "SOVEREIGN DEMOCRATIC REPUBLIC", the words "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC" shall be substituted; and

(b) for the words "unity of the Nation", the words "unity and integrity of the Nation" shall be substituted.

3. *Insertion of new sub-heading after article 31.*—After article 31 of the Constitution, the following sub-heading shall be inserted, namely:—

"*Saving of Certain Laws*"

4. *Amendment of article 31C.*—In article 31C of the Constitution, for the words, brackets, letters and figures "the principles specified in clause (b) or clause (c) of article 39", the words and figures "all or any of the principles laid down in Part IV" shall be substituted.

5. *Insertion of new article 31D.*—After article 31C of the Constitution and before the sub-heading "*Right to Constitutional Remedies*", the following article shall be inserted, namely:—

'31D. *Savings of laws in respect of anti-national activities.*—(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the prevention or prohibition of anti-national

(b) the prevention of formation of, or the prohibition of, anti-national associations,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, article 14, article 19 or article 31.

(2) Notwithstanding anything in this Constitution, Parliament shall have, and the Legislature of a State shall not have, power to make laws with respect to any of the matters referred to in sub-clause *(a)* or sub-clause *(b)* of clause (1).

(3) Any law with respect to any matter referred to in sub-clause *(a)* or sub-clause *(b)* of clause (1) which is in force immediately before the commencement of section 5 of the Constitution (Forty-second Amendment) Act, 1976, shall continue in force until altered or repealed or amended by Parliament.

(4) In this article,—

(a) "association" means an association of persons;

(b) "anti-national activity", in relation to an individual or association, means any action taken by such individual or association—

(i) which is intended, or which supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India or which incites any individual or association to bring about such cession or secession;

(ii) which disclaims, questions, threatens, disrupts or is intended to threaten or disrupt the sovereignty and integrity of India or the security of the State or the unity of the nation;

(iii) which is intended, or which is part of a scheme which is intended, to overthrow by force the Government as by law established;

(iv) which is intended, or which is part of a scheme which is intended, to create internal disturbance or the disruption of public services;

(v) which is intended, or which is part of a scheme which is intended, to threaten or disrupt harmony between different religious, racial, language or regional groups or castes or communities;

(c) "anti-national association" means an association—

(i) which has for its object any anti-national activity;

(*ii*) which encourages or aids persons to undertake or engage in any anti-national activity;

(*iii*) the members whereof undertake or engage in any anti-national activity.'.

6. *Insertion of new article 32A.*—After article 32 of the Constitution, the following article shall be inserted, namely:—

"32A. *Constitutional validity of State laws not to be considered in proceedings under article 32.*—Notwithstanding anything in article 32, the Supreme Court shall not consider the constitutional validity of any State law in any proceedings under that article unless the constitutional validity of any Central law is also in issue in such proceedings.".

7. *Amendment of article 39.*—In article 39 of the Constitution, for clause (f), the following clause shall be substituted, namely:—

"(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.".

8. *Insertion of new article 39A.*—After article 39 of the Constitution, the following article shall be inserted, namely:—

"39A. *Equal justice and free legal aid.*—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.".

9. *Insertion of new article 43A.*—After article 43 of the Constitution, the following article shall be inserted, namely:—

"43A. *Participation of workers in management of industries.*—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.".

10. *Insertion of new article 48A.*—After article 48 of the Constitution, the following article shall be inserted, namely:—

"48A. *Protection and improvement of environment and safeguarding of forests and wild life.*—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.".

11. *Insertion of new Part IVA.*—After Part IV of the Constitution, the following Part shall be inserted, namely:—

"PART IV A

FUNDAMENTAL DUTIES

51A. *Fundamental duties.*—It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.".

12. *Amendment of article 55.*—In article 55 of the Constitution, for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'*Explanation.*—In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been

published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.'.

13. *Amendment of article 74.*—In article 74 of the Constitution, for clause (1), the following clause shall be substituted, namely:—

"(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.".

14. *Amendment of article 77.*—In article 77 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

"(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of India.".

15. *Amendment of article 81.*—In article 81 of the Constitution, to clause (3), the following proviso shall be added, namely:—

"Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.".

16. *Amendment of article 82.*—In article 82 of the Constitution, after the proviso, the following provisos shall be inserted, namely:—

"Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.".

17. *Amendment of article 83.*—(1) In article 83 of the Constitution, in clause (2), for the words "five years" in the two places where they occur, the words "six years" shall be substituted.

(2) The amendments made by sub-section (1) to clause (2) of article 83 shall apply also to the House of the People in existence on the date of coming into force of this section without prejudice to the power of Parliament with respect to the extension of the duration of that House under the proviso to that clause.

18. *Amendment of article 100.*—In article 100 of the Constitution clauses (3) and (4) shall be omitted.

19. *Amendment of article 102.*—In article 102 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:—

"(a) if he holds any such office of profit under the Government of India or the Government of any State as is declared by Parliament by law to disqualify its holder;".

20. *Substitution of new article for article 103.*—For article 103 of the Constitution, the following article shall be substituted, namely:—

"103. *Discussion on questions as to disqualification.*—(1) If any question arises—

(a) as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, or

(b) as to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as, and for being, a member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification,

the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.".

21. *Amendment of article 105.*—In article 105 of the Constitution, for clause (3), the following clause shall be substituted, namely:—

"(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be those of that House, and of its members and committees, at the commencement of section 21 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of Parliament from time to time.".

22. *Amendment of article 118.*—In article 118 of the Constitution, in clause (1), after the words "its procedure", the brackets and words "(including the quorum to constitute a meeting of the House)" shall be inserted.

23. *Insertion of new article 131A.*—After article 131 of the Constitution, the following article shall be inserted, namely:—

"131A. *Exclusive jurisdiction of Supreme Court in regard to questions as to constitutional validity of Central laws.*—(1) Notwithstanding anything contained in any other provision of this Constitution, the Supreme Court shall, to the exclusion of any other court, have jurisdiction to determine all questions relating to the constitutional validity of any Central law.

(2) Where a High Court is satisfied—

(a) that a case pending before it or before a court subordinate to it involves questions as to the Constitutional validity of any Central law or, as the case may be, of both Central and State laws; and

(b) that the determination of such questions is necessary for the disposal of the case,

the High Court shall after the questions for the decision of the Supreme Court.

(3) Without prejudice to the provisions of clause (2), where, on an application made by the Attorney-General of India, the Supreme Court is satisfied,—

(a) that a case pending before a High Court or before a court subordinate to a High Court involves questions as to the constitutional validity of any Central law or, as the case may be, of both Central and State laws; and

(b) that the determination of such questions is necessary for the disposal of the case,

the Supreme Court may require the High Court to refer the questions to it for its decision.

(4) When a reference is made under clause (2) or clause (3), the High Court shall stay all proceedings in respect of the case until the Supreme Court decides the questions so referred.

(5) The Supreme Court shall, after giving the parties an opportunity of being heard, decides the questions so referred. and may—

(a) either dispose of the case itself; or

(b) return the case to the High Court together with a copy of its judgment on such questions for disposal of the case in conformity with such judgment by the High Court or, as the case may be, the court subordinate to it.".

24. *Insertion of new article 139A.*—After article 139 of the Constitution. the following article shall be inserted, namely:—

... (1) If on an application

satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before, the High Court or the High Courts and dispose of all the cases itself.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.".

25. *Insertion of new article 144A.*—After article 144 of the Constitution, the following article shall be inserted, namely:—

"144A. *Special provisions as to disposal of questions relating to constitutional validity of laws.*—(1) The minimum number of Judges of the Supreme Court who shall sit for the purpose of determining any question as to the constitutional validity of any Central law or State law shall be seven.

(2) A Central law or a State law shall not be declared to be constitutionally invalid by the Supreme Court unless a majority of not less than two-thirds of the Judges sitting for the purpose of determining the question as to the constitutional validity of such law hold it to be constitutionally invalid.".

26. *Amendment of article 145.*—In article 145 of the Constitution,—

(a) in clause (1), after sub-clause (c), the following sub-clause shall be inserted, namely:—

"(cc) rules as to the proceedings in the Court under articles 131A and 139A;";

(b) in clause (2), for the words, brackets and figure "provisions of clause (3)", the words, figures, letter and brackets "provisions of article 144A and of clause (3)" shall be substituted;

(c) in clause (3), for the words "The minimum number", the words, figures and letter "Subject to the provisions of article 144A, the minimum number" shall be substituted.

27. *Substitution of new article for article 150.*—For article 150 of the Constitution, the following article shall be substituted, namely:—

"150. *Form of accounts of the Union and of the States.*—The accounts of the Union and of the States shall be kept in such form as the President may, after consultation with the Comptroller and Auditor-General of India, prescribe.".

28. *Amendment of article 166.*—In article 166 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

"(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of the State.".

29. *Amendment of article 170.*—In article 170 of the Constitution,—

(a) in clause (2), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'*Explanation.*—In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.';

(b) in clause (3), after the proviso, the following provisos shall be inserted, namely:—

"Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.".

30. *Amendment of article 172.*—(1) In article 172 of the Constitution, in clause (1), for the words "five years" in the two places where they occur, the words "six years" shall be substituted.

(2) The amendments made by sub-section (1) to clause (1) of article 172 shall apply also to every Legislative Assembly (including the Legislative Assembly of the State of Kerala) in existence on the date of coming into force of this section without prejudice to the power of Parliament with respect to the extension of the duration of such Assembly under the proviso to that clause.

31. *Amendment of article 189.*—In article 189 of the Constitution, clauses (3) and (4) shall be omitted.

32. *Amendment of article 191.*—In article 191 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:—

"(a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule as is declared by Parliament by law to disqualify its holder;".

33. *Substitution of new article for article 192.*—For article 192 of the Constitution, the following article shall be substituted, namely:—

"192. *Decision on questions as to disqualification.*—(1) If any question arises—

(a) as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, or

(b) as to whether a person, found guilty of a corrupt practice at an election to a House of the Legislature of a State under any law made by Parliament, shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification,

the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.".

34. *Amendment of article 194.*—In article 194 of the Constitution, for clause (3), the following clause shall be substituted, namely:—

"(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be those of that House, and of its members and committees, at the commencement of section 34 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of the Legislature of a State, so far as may be, in accordance with those of the House of the people, and of its members and committees where such House is the Legislative Assembly and in accordance with those of the Council of States, and of its members and committees where such House is the Legislative

35. *Amendment of article 208.*—In article 208 of the Constitution, in clause (1), after the words "its procedure", the brackets and words "(including the quorum to constitute a meeting of the House)" shall be inserted.

36. *Amendment of article 217.*—In article 217 of the Constitution, in clause (2),—

(a) in sub-clause (b), the word "or" shall be inserted at the end;

(b) after sub-clause (b), the following sub-clause shall be inserted, namely:—

"(c) is, in the opinion of the President, a distinguished jurist.";

(c) in the *Explanation*, in clause (a), for the words "has held judicial office", the words "has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law" shall be substituted.

37. *Amendment of article 225.*—In article 225 of the Constitution, the proviso shall be omitted.

38. *Substitution of new article for article 226.*—For article 226 of the Constitution, the following article shall be substituted, namely:—

"226. *Power of High Courts to issue certain writs.*—(1) Notwithstanding anything in article 32 but subject to the provisions of article 131A and article 226A, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them,—

(a) for the enforcement of any of the rights conferred by the provisions of Part III; or

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in sub-clause (b) where such illegality has resulted in substantial failure of justice.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

(4) No interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) unless—

(a) copies of such petition and of all documents in support of the plea for such interim order are furnished to the party against whom such petition is filed or proposed to be filed; and

(b) opportunity is given to such party to be heard in the matter.

(5) The High Court may dispense with the requirements of sub-clauses (a) and (b) of clause (4) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being caused to the petitioner which cannot be adequately compensated in money but any such interim order shall, if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order.

(6) Notwithstanding anything in clause (4) or clause (5), no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government.

(7) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by cla[illegible] (2) of arti[illegible]

39. *Insertion of new article 226A.*—After article 226 of the Constitution, the following article shall be inserted, namely:—

"226A. *Constitutional validity of Central laws not to be considered in proceedings under article 226.*—Notwithstanding anything in article 226, the High Court shall not consider the constitutional validity of any Central law in any proceedings under that article.".

40. *Amendment of article 227.*—In article 227 of the Constitution,—

(a) for clause (1), the following clause shall be substituted, namely:—

"(1) Every High Court shall have superintendence over all courts subject to its appellate jurisdiction.";

(b) after clause (4), the following clause shall be inserted, namely:—

"(5) Nothing in this article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.".

41. *Amendment of article 228.*—In article 228 of the Constitution, for the words "it shall withdraw the case and may—", words, figures and letter "it shall withdraw the case and, subject to the provisions of article 131A, may—" shall be substituted.

42. *Insertion of new article 228A.*—After article 228 of the Constitution, the following article shall be inserted, namely:—

"228A. *Special provisions as to disposal of questions relating to constitutional validity of State laws.*—(1) No High Court shall have jurisdiction to declare any Central law to be constitutionally invalid.

(2) Subject to the provisions of article 131A, the High Court may determine all questions relating to the constitutional validity of any State law.

(3) The minimum number of Judges who shall sit for the purpose of determining any question as to the constitutional validity of any State law shall be five:

Provided that where the High Court consists of less than five Judges, all the Judges of the High Court may sit and determine such question.

(4) A State law shall not be declared to be constitutionally invalid by the High Court unless—

(a) where the High Court consists of five Judges or more, not less than two-thirds of the Judges sitting for the purpose

... hold it to be consti-

(b) where the High Court consists of less than five Judges, all the Judges of the High Court sitting for the purpose hold it to be constitutionally invalid.

(5) The provisions of this article shall have effect notwithstanding anything contained in this Part.

Explanation.—In computing the number of Judges of a High Court for the purposes of this article, a Judge who is disqualified by reason of personal or pecuniary bias shall be excluded.".

43. *Insertion of new article 257A.*—After article 257 of the Constitution, the following article shall be inserted, namely:—

"257A. *Assistance to States by deployment of armed forces or other forces of the Union.*—(1) The Government of India may deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any State.

(2) Any armed force or other force or any contingent or unit thereof deployed under clause (1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence or control of the State Government or any officer or authority subordinate to the State Government.

(3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof deployed under clause (1) during the period of such deployment.".

44. *Amendment of article 311.*—In article 311 of the Constitution, in clause (2),—

(a) the words "and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry" shall be omitted;

(b) for the words "Provided that this clause shall not apply—", the following shall be substituted, namely:—

"Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—".

45. *Amendment of article 312.*—In article 312 of the Constitution,—

(a) in clause (1),—

(i) for the word and figures "Part XI", the words and figures "Chapter VI of Part VI or Part XI" shall be substituted;

(ii) after the words "all-India services", the brackets and words "(including an all-India judicial service)" shall be inserted:

(b) after clause (2), the following clauses shall be inserted, namely:—

"(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.".

46. *Insertion of new Part XIVA.*—After Part XIV of the Constitution, the following Part shall be inserted, namely:—

'PART XIV A

TRIBUNALS

323A. *Administrative Tribunals.*—(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

323B. *Tribunals for other matters.*—(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:—

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

(g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

(h) offences against laws with respect to any of the matters specified in sub-clauses (

(i) any matter incidental to any of the matters specified in sub-clauses (a) to (h).

(3) A law made under clause (1) may—

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment:

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.'.

47. *Amendment of article 330.*—In article 330 of the Constitution, the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—In this article and in article 332, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as

48. *Amendment of article 352.*—In article 352 of the Constitution,—

(a) in clause (1), after the words "make a declaration to that effect", the following shall be inserted, namely:—

"in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation";

(b) in clause (2), in sub-clause (a), after the word "revoked", the words "or varied" shall be inserted;

(c) after clause (2), the following clause shall be inserted, namely:—

"(2A) Where a Proclamation issued under clause (1) is varied by a subsequent Proclamation, the provisions of clause (2) shall, so far as may be, apply in relation to such subsequent Proclamation as they apply in relation to a Proclamation issued under clause (1).".

49. *Amendment of article 353.*—To article 353 of the Constitution, the following proviso shall be added, namely:—

"Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India,—

(i) the executive power of the Union to give directions under clause (a), and

(ii) the power of Parliament to make laws under clause (b),

shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.".

50. *Amendment of article 356.*—In article 356 of the Constitution, in clause (4), for the words "six months", wherever they occur, the words "one year" shall be substituted.

51. *Amendment of article 357.*—(1) In article 357 of the Constitution, for clause (2), the following clause shall be substituted, namely:—

"(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a

(2) The amendment made by sub-section (1) shall apply also to any law referred to in clause (2) of article 357 of the Constitution which is in force immediately before the coming into force of this section.

52. *Amendment of article 358.*—To article 358 of the Constitution, the following proviso shall be added, namely:—

"Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.".

53. *Amendment of article 359.*—In article 359 of the Constitution,—

(a) to clause (1A), the following proviso shall be added, namely:—

"Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.";

(b) to clause (2), the following proviso shall be added, namely:—

"Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary.".

54. *Amendment of article 366.*—In article 366 of the Constitution,—

(a) after clause (4), the following clause shall be inserted, namely:—

'(4A) "Central law" means any law other than a State law [illegible] include any amendment of this Constitution made

(b) after clause (26), the following clause shall be inserted, namely:—

'(26A) "State law" means—

(a) a State Act or an Act of the Legislature of a Union territory;

(b) an Ordinance promulgated by the Governor of a State under article 213 or by the administrator of a Union territory under article 239B;

(c) any provision with respect to a matter in the State List in a Central Act made before the commencement of this Constitution;

(d) any provision with respect to a matter in the State List or the Concurrent List in a Provincial Act;

(e) any notification, order, scheme, rule, regulation or bye-law or any other instrument having the force of law made under any Act, Ordinance or provisions referred to in sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (d);

(f) any notification, order, scheme, rule, regulation or bye-law or any other instrument having the force of law, not falling under sub-clause (e), and made by a State Government or the administrator of a Union territory or an officer or authority subordinate to such Government or administrator; and

(g) any other law (including any usage or custom having the force of law) with respect to a matter in the State List.'.

55. *Amendment of article 368.*—In article 368 of the Constitution, after clause (3), the following clauses shall be inserted, namely:—

"(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.".

56. *Amendment of article 371F.*—In article 371F of the Constitution, in clause (c), for the words "five years", the words "six years" shall be substituted and for the words "four years" in the two places where they occur, the words

57. *Amendment of the Seventh Schedule.*—In the Seventh Schedule to the Constitution,—

(a) in List I—Union List, after entry 2, the following entry shall be inserted, namely:—

"2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.";

(b) in List II—State List,—

(i) in entry 1, for the words "the use of naval, military or air forces or any other armed forces of the Union", the words "the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof" shall be substituted;

(ii) for entry 2, the following entry shall be substituted, namely:—

"2. Police (including railway and village police) subject to the provisions of entry 2A of List I.";

(iii) in entry 3, the words "Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court;" shall be omitted;

(iv) entries 11, 19, 20 and 29 shall be omitted;

(v) in entry 55, the words "and advertisements broadcast by radio or television" shall be inserted at the end;

(c) in List III—Concurrent List,—

(i) after entry 11, the following entry shall be inserted, namely:—

"11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.";

(ii) after entry 17, the following entries shall be inserted, namely:—

"17A. Forests.

17B. Protection of wild animals and birds.";

(iii) after entry 20, the following entry shall be inserted, namely:—

"20A. Population control and family planning.";

(iv) for entry 25, the following entry shall be substituted, namely:—

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.";

(v) after entry 33, the following entry shall be inserted, namely:—

"33A. Weights and measures except establishment of standards.".

58. *Special provisions as to pending petitions under article 226.*—(1) Notwithstanding anything contained in the Constitution, every petition made under article 226 of the Constitution before the appointed day and pending before any High Court immediately before that day (such petition being referred to in this section as a pending petition) and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition before that day shall be dealt with in accordance with the provisions of article 226 as substituted by section 38.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), every pending petition before a High Court which would not have been admitted by the High Court under the provisions of article 226 as substituted by section 38 if such petition had been made after the appointed day, shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition shall stand vacated:

Provided that nothing contained in this sub-section shall affect the right of the petitioner to seek relief under any other law for the time being in force in respect of the matters to which such petition relates and in computing the period of limitation, if any, for seeking such relief, the period during which the proceedings relating to such petition were pending in the High Court shall be excluded.

(3) Every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day, on, or in any proceedings relating to, a pending petition [not being a pending petition which has abated under sub-section (2)], and which is in force on that day, shall, unless before the appointed day copies of such pending petition and of documents in support of the plea for such interim order had been furnished to the party against whom such interim order was made and an opportunity had been given to such party to be heard in the matter, cease to have effect (if not vacated earlier),—

(a) on the expiry of a period of one month from the ...

in support of the plea for the interim order are not furnished to such party before the expiry of the said period of one month; or

(b) on the expiry of a period of four months from the appointed day, if the copies referred to in clause (a) have been furnished to such party within the period of one month referred to in that clause but such party has not been given an opportunity to be heard in the matter before the expiry of the said period of four months.

(4) Notwithstanding anything contained in sub-section (3), every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day, on, or in any proceedings relating to, a pending petition [not being a pending petition which has abated under sub-section (2)], and which is in force on that day, shall, if such order has the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government, stand vacated.

Explanation.—In this section, "appointed day" means the date on which section 38 comes into force.

59. *Power of the President to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of the President's assent to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution, as appear to him to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

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14. The Special Officer shall inform the applicant in writing that his application is granted, or refused, as the case may be and if the application is granted shall state in writing the terms and conditions which he may impose if the application is refused he shall state the reasons therefor.

15. The development of lands and building operations under this order shall comply with all such terms and conditions not inconsistent with this order as the Special Officer may reasonably impose.

16. Any applicant aggrieved byan order of the Special Officer may, within two weeks from the date on which the order is communicated to him appeal to the Government. The Government may either *suo-motu* or on receipt of such appeal call for the records of the case from the Special Officer and pass such orders as they deem fit after giving reasonable opportunity to the parties affected. The order issued by Government shall be final.

17. The Special Officer shall refuse an application under this order for interim development on any of the following grounds:—

(i) that development would tend to the use of the land or the building for a purpose which is of a noxious or otherwise offensive character; or

(ii) that the land for which application for development is made ought to be reserved for a public open space under a scheme that may be promulgated; or

(iii) that the land may have to be reserved for a public purpose or for the execution of works under the proposed scheme; or

(iv) that it is proposed to include the site of the new building or a part thereof in an area to be reserved by the scheme for a purpose, the carrying out of which would in the future necessitate the removal or alteration of the new building; or

(v) that the building or any part thereof is intended to be used as a factory, a godown or a cinema hall or any other institution and that such use would injuriously affect the health, convenience or amenities of the inhabitants of the locality or to the Government institutions or such use is likely to spread infectious disease or epidemics;

(vi) that the development is not likely to be in conformity with any of the provisions of the scheme under preparation.

18. In considering the applications under this order, the Special Officer shall consult the Development Authority before the application is granted or refused.

19. The Government may in appropriate cases and after such enquiry as they deem fit to make, allow compensation to those who in their opinion have suffered unnecessary loss or expense in the enforcement of any of the restrictions imposed by this order.

20. This order shall cease to be in force in the event of the failure to publish a scheme before 31-12-1977.

By order of the Governor,

N. Gopalakrishnan Nair,
Special Secretary.

Explanatory Note

This is not part of the notification but is intended to indictae its general purport.

The District Headquarters of Idukki has been shifted to Painavu, Idukki in June, 1976. Hence the creation of the Idukki Development Authority has become an immediate necessity for the planned development of the City. This notification is to achieve the above object.

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GOVERNMENT OF KERALA

Agriculture (Forest Special) Department

NOTIFICATION

No. 246/FS2/77/AD. *Dated, Trivandrum, 8th January 1977.*

S. R. O. No. 37/77.—Whereas Shri P. S. Menon, Forest Tribunal with headquarters at Kozhikode, constituted by Notification No. 58625/FS1/73/AD dated the 22nd October, 1973 will be proceeding on leave with effect from the 11th day of January, 1977;

Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 7 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971), the Government of Kerala hereby order that the Forest Tribunal with headquarters at Manjeri, constituted by Notification No. 57817/FS2-1/75/AD dated 27th November, 1975, published as S. R. O. No. 1139/75 in the Kerala Gazette Extraordinary No. 708 dated the 28th November, 1975 as subsequently amended shall, during the period of leave of Shri P. S. Menon, exercise jurisdiction over the areas within the jurisdiction of the Forest Tribunal, Kozhikode, namely, Cannanore and Kozhikode Districts, also.

By order of the Governor,
K. V. VIDYADHARAN,
Additional Secretary.

Explanatory Note

(This is not part of the notification)

In G. O. Rt. 57/77/AD dated 5-1-1977 Shri P. S. Menon, Forest Tribunal, Kozhikode was granted commuted leave for 30 days from 11-1-1977. Government have decided that during the period of leave of Shri Menon, Forest Tribunal, Manjeri should exercise jurisdiction over the areas within the jurisdiction of the Forest Tribunal, Kozhikode. The notification is published to achieve the above objective.

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